

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5167 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO
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GSRTC

Versus

ML PATHAN

Appearance:

1. Special Civil Application No. 5167 of 1995
MR HS MUNSHAW for Petitioner No. 1
..... for Respondent No. 1
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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 05/04/2002

ORAL JUDGEMENT

Heard learned advocate Mr.Munshaw for the petitioner. Notice of rule issued by this court has been served upon the respondent but the respondent has not appeared before this Court either in person or through an

advocate and, therefore, this court has taken up this matter for final hearing in absence of the respondent.

By way of this petition, the petitioner has challenged the award made by the industrial tribunal, Surat in Reference IT No. 116 of 1989 wherein the respondent has challenged the punishment of lowering down in the minimum time scale of driver category. Learned advocate Mr. Munshaw for the petitioner has submitted that the respondent driver was on duty on 4.12.1987 from Baroda to Songadh Route in a bus bearing No. GRQ-7768 and at that time, at about 4.45 hours near Makarpura lake in the city of Vadodara, accident had taken place with one old person because of the injury, he died. In view of the alleged misconduct, the workman concerned was served with a chargesheet on 1.12.1987 and departmental inquiry was initiated and the competent authority has vide order bearing Default Order NO.76/88 dated 19.4.1988 reduced the basic salary of the workman by four stages from Rs.492.00 to Rs.392.00 against which order, the first appeal no. 390 of 1990 was filed by the workman wherein the case of the respondent was reviewed by the appellate authority and ultimately the reviewing authority imposed punishment by order dated 31st January, 1989 to lower down the salary of the workman by 10 stage from Rs.492.00 to Rs.292.00. That order was challenged by the respondent before the tribunal. Learned advocate Mr. Munshaw has submitted that in an accident, one person has lost his life who was crossing the road and, therefore, looking to the records produced before the departmental authority, he was found to be negligent and careless in driving the vehicle which has resulted in death of one pedestrian and, therefore, punishment imposed by the reviewing authority was right and the tribunal ought not to have interfered with such punishment. He has submitted that the tribunal has reappreciated the entire evidence led in the departmental inquiry like a criminal court and such an approach of the tribunal is contrary to the settled law. He has submitted that the competent authority has passed the order after verifying the entire record and panchkayas as well as the other relevant record and the police papers and it was found that the respondent was driving the vehicle in a negligent and careless manner and, therefore, the tribunal is not justified in interfering with the punishment imposed by the reviewing authority. Alternatively, it was his submission that even if the punishment imposed by the reviewing authority is found to be harsh and excessive by this court, then, original punishment imposed by the competent authority lowering down the workman to four stages may be restored.

I have considered the submissions made by Mr. Munshaw. I have also perused the entire award made by the tribunal. The tribunal has considered that in the departmental inquiry, only reporter was examined and relevant police papers were placed before the competent authority. These papers have not been proved in the departmental inquiry by leading oral evidence of such person and only reporter was examined who was admittedly not an eye witness and except the reporter, no other person has been examined and therefore, for want of any direct evidence as regards negligence and carelessness on the part of the respondent driver, the tribunal has set aside the order of punishment imposed by the reviewing authority.

The petitioner corporation has produced the findings given by the competent authority and on that basis, the first punishment was imposed by the competent authority dated 19th April, 1988. I have gone through the findings and the reasons given by the competent authority holding the liability of the respondent workman. The competent authority has considered the panchanama and other relevant papers and has come to the conclusion that the bus was being driven in high speed and that is how it has resulted in an accident. Considering these facts and circumstances of the case and also looking to the evidence recorded by the competent authority, according to my opinion, it would be just and proper to restore the original punishment imposed by the competent authority dated 19th April, 1988 and to that extent, the award made by the tribunal is required to be modified.

In the result, present petition is partly allowed. The award made by the tribunal dated 25.4.1994 in Reference NO. 116 of 1989 is modified to the effect that the respondent workman is required to undergo the original punishment which was imposed by the competent authority by order dated 19th April, 1988 wherein he was ordered to be lowered down to 4 stage in the pay of driver from Rs. 492.00 to Rs.392.00 and the directions issued by the tribunal quashing and setting aside the order passed by the reviewing authority dated 31st January, 1989 shall remain in tact. Award made by the tribunal in aforesaid reference shall stand modified in above terms. Rule is made absolute accordingly with no order as to costs.

5.4.2002. (H.K. Rathod, J.)

Vyas